

(c) *Federal minimum wage rate.* In no event shall an AEWR computed pursuant to this section be lower than the hourly wage rate published in 29 U.S.C. 206(a)(1) and currently in effect.

[52 FR 20507, June 1, 1987, as amended at 54 FR 28046, July 5, 1989]

**§ 655.108 H-2A applications involving fraud or willful misrepresentation.**

(a) *Referral for investigation.* If possible fraud or willful misrepresentation involving a temporary alien agricultural labor certification application is discovered prior to a final temporary alien agricultural labor certification determination or if it is learned that the employer or agent (with respect to an application) is the subject of a criminal indictment or information filed in a court, the RA shall refer the matter to the INS and DOL Office of the Inspector General for investigation. The RA shall continue to process the application and may issue a temporary alien agricultural labor certification.

(b) *Continued processing.* If a court finds an employer or agent not guilty of fraud or willful misrepresentation, or if the Department of Justice decides not to prosecute an employer or agent, the RA shall not deny the temporary alien agricultural labor certification application on the grounds of fraud or willful misrepresentation. The application, of course, may be denied for other reasons pursuant to this subpart.

(c) *Terminated processing.* If a court or the INS determines that there was fraud or willful misrepresentation involving a temporary alien agricultural labor certification application, the application is thereafter invalid, consideration of the application shall be terminated and the RA shall return the application to the employer or agent with the reasons therefor stated in writing.

**§ 655.110 Employer penalties for non-compliance with terms and conditions of temporary alien agricultural labor certifications.**

(a) *Investigation of violations.* If, during the period of two years after a temporary alien agricultural labor certification has been granted (in whole or in part), the RA has reason to believe

that an employer violated a material term or condition of the temporary alien agricultural labor certification, the RA shall, except as provided in paragraph (b) of this section, investigate the matter. If, after the investigation, the RA determines that a substantial violation has occurred, the RA, after consultation with the Director, shall notify the employer that a temporary alien agricultural certification request will not be granted for the next period of time in a calendar year during which the employer would normally be expected to request a temporary alien agricultural labor certification, and any application subsequently submitted by the employer for that time period will not be accepted by the RA. If multiple or repeated substantial violations are involved, the RA's notice to the employer shall specify that the prospective denial of the temporary alien agricultural labor certification will apply not only to the next anticipated period for which a temporary alien agricultural labor certification would normally be requested, but also to any periods within the coming two or three years; two years for two violations, or repetitions of the same violations, and three years for three or more violations, or repetitions thereof. The RA's notice shall be in writing, shall state the reasons for the determinations, and shall offer the employer an opportunity to request an expedited administrative review or a *de novo* hearing before an administrative law judge of the determination within seven calendar days of the date of the notice. If the employer requests an expedited administrative review or a *de novo* hearing before an administrative law judge, the procedures in § 655.112 of this part shall be followed.

(b) *Employment Standards Administration investigations.* The RA may make the determination described in paragraph (a) of this section based on information and recommendations provided by the Employment Standards Administration, after an Employment Standards Administration investigation has been conducted in accordance with the Employment Standards Administration procedures, that an employer has not complied with the terms and conditions of employment prescribed as a